GLOBAL LIFE CAMPAIGN™

Louisiana Constitution & Law v. U.S. Supreme Court (Part 3)

Thomas W. Jacobson, Executive Director, Global Life Campaign (2020-07-22)

Some GLC members expressed interest in knowing why Chief Justice Roberts sided with the 4 pro-abortion justices of the U.S. Supreme Court in the recent case of *June Medical Services LLC* v. *Russo, Interim Secretary, Louisiana Department of Health and Hospitals*? The GLC Series this week, focusing on the *Sanctity of Human Life*, continues with Part 3 of the review of that case.

Chief Justice Roberts concurred with Justices Breyer, Ginsburg, Sotomayor, and Kagan, thus making their opinion the majority opinion in this case. In Chief Justice Roberts opinion:

- The Fourteenth Amendment was used to justify abortion in a prior case (see his first paragraph below; which is why Justice Thomas addressed that misapplication [see Part 2]).
- He continues "to believe that the [prior] case was wrongly decided," but irrationally chooses to uphold the wrong decision as precedent (see second paragraph below).
- By so doing, he ruled that "previability abortion" – intentional murder of a child in the womb prior to viability outside the womb – is to be legally protected.
- Thus he appears to believe that the lives of these preborn babies, the State "interest in protecting the life of the unborn," and standard safe medical practices don't provide a "special circumstance" sufficient to reconsider a prior court decision regarding abortion.
- He said: "The Louisiana law imposes a burden on access to abortion just as severe as . . . for the same reasons. Therefore Louisiana's law cannot stand under our precedents."
- He then justifies following precedents, but those historic justifications for *stare decisis* – especially from Sir William Blackstone's *Commentaries,* or Alexander Hamilton and *The Federalist Papers* – were not developed so a court should uphold a wrong or evil decision.
- He also twice quoted from or referenced the late Justice Scalia, but Scalia would have opposed him on this decision and joined Justice Thomas' dissent.
- By his concurring opinion, he provided evidence that he shares, though inconsistently, the 14 presuppositions of the other 4 pro-abortion members of the U.S. Supreme Court (see Part 2).

Here is the opening statement and some excerpts from Chief Justice Robert's opinion:

> "In July 2013, Texas enacted a law requiring a physician performing an abortion to have 'active admitting privileges at a hospital . . . located not further than 30 miles from the location at which the abortion is performed.' . . . The law caused the number of facilities providing abortions to drop in half. In *Whole Woman's Health* v. *Hellerstedt*, 579 U.S. (2016), the Court concluded that Texas's admitting privileges requirement 'places a substantial obstacle in the path of women seeking a previability abortion' and therefore violated the Due Process Clause of the Fourteenth Amendment. . . .

"I joined the dissent in *Whole Woman's Health* and continue to believe that the case was wrongly decided. The question today however is not whether *Whole Woman's Health* was right or wrong, but whether to adhere to it in deciding the present case. . . .

"Today's case is a challenge from several abortion clinics and providers to a Louisiana law nearly identical to the Texas law struck down four years ago in *Whole Woman's Health*. Just like the Texas law, the Louisiana law requires physicians performing abortions to have 'active admitting privileges at a hospital . . . located not further than thirty miles from the location at which the abortion is performed.' . . . Following a six-day bench trial, the District Court found that Louisiana's law would 'result in a drastic reduction in the number and geographic distribution of abortion providers.' . . . The law would reduce the number of clinics from three to 'one, or at most two,' and the number of physicians providing abortions from five to 'one, or at most two,' and 'therefore cripple women's ability to have an abortion in Louisiana.' . . .

"The legal doctrine of *stare decisis* requires us, absent special circumstances, to treat like cases alike. The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana's law cannot stand under our precedents.

"I. *Stare decisis* ('to stand by things decided') is the legal term for fidelity to precedent. …

"II. A. *Casey* reaffirmed 'the most central principle of *Roe* v. *Wade*,' 'a woman's right to terminate her pregnancy before viability.' . . . At the same time, it recognized that the State has 'important and legitimate interests in . . . protecting the health of the pregnant woman and in protecting the potentiality of human life. . . .

"Under *Casey*, the State may not impose an undue burden on the woman's ability to obtain an abortion."

Conclusion. Chief Justice Roberts clearly took his stand in siding with the U.S. Supreme Court's prior decisions – explicitly including *Roe*, *Casey* and *Whole Woman's Health* – in support of a woman having unrestricted access to abort her previable baby; and sided with the 4 pro-abortion justices of the Court. One of the most striking realizations to me was the difference between Roberts and Thomas in the basis for their opinions: Justice Thomas' had a fixed reference point in the text of the U.S. Constitution and Amendments; but Chief Justice Roberts gave the prior Court's own rulings as his basis, and interpreted the Constitution, not from its text, but through the lens of prior Supreme Court abortion cases. Another striking realization was that Federal courts have no constitutional jurisdiction to be considering and ruling in these abortion cases, which are entirely within State (and local) government authority, as Justice Thomas documented in his dissent (see Part 2). Part 4 next week will review the dissenting opinions of Justices Alito, Gorsuch and Kavanaugh.

SDG and for the sanctity of human life,

Thomas W. Jacobson, Executive Director, Global Life Campaign
info@GlobalLifeCampaign.com
www.GlobalLifeCampaign.com ; www.GLCPublications.com

"Woe to those who enact evil statutes, and to those who constantly record unjust decisions so as to deprive the needy of justice . . . that they may plunder the fatherless" (Isaiah 10:1-2).